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COMMITTEE MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
PERMITTING AND ENFORCEMENT COMMITTEE

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SACRAMENTO, CALIFORNIA

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

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Michael Paparian

Steven R. Jones

Cheryl Peace

STAFF

Mark Leary, Executive Director

Julie Nauman, Chief Deputy Director

Elliot Block, Staff Counsel

Gabe Aboushanab

Mark de Bie

Reinhard Hohlwein

Howard Levenson, Deputy Director

Allison Spreadborough

ALSO PRESENT

Mark Aprea, Republic Services

Johnnie Carlson II, Californians Against Waste

Tom Davis, Justice L. Associates

Teresa Dodge, L.A. County Sanitation District

Joan Edwards, J. Edwards and Associates

Don Gambelin, Norcal Waste

Gary Liss, Gary Lliss and Associates

Justin Malan, CCDEH

Greg Pirie, Napa County LEA

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iii

APPEARANCES CONTINUED

ALSO PRESENT

Beatrice Poroli

Chuck White, Waste Management

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INDEX

	Page
Roll Call and Declaration of Quorum	1
A. Deputy Director's Report	2
B. Consideration of the Scope of Work for the Characterization of Radionuclides in Landfill Leachates and Groundwater Contract	
C. Consideration of a Revised Full Solid Waste Facilities Permit for the Greenwaste Recovery Facility, Santa Clara County	6
Motion	7
Vote	8
D. Public Hearing for Proposed Revised Alternative Daily Cover Regulations	46
E. Discussion and Request for Direction to Notice for 45-Day Comment Period Proposed Amendments to Regulations for Local Enforcement Agency Certification Requirements for Technical Expertise	15
F. Discussion of New Requirements Adopted in the Construction, Demolition, and Inert Debris Processing Regulations and Their Possible Application to the Regulation of Other Solid Wastes	8
G. Discussion and Request for Rulemaking Direction on Noticing Revisions to the Proposed Regulations for Construction and Demolition Debris and Inert Debris Disposal Regulatory Requirements for an Additional Comment Period	18
H. Adjournment	75
I. Reporter's Certificate	76

1 PROCEEDINGS

2 CHAIRPERSON PAPARIAN: Good afternoon,
3 everybody. This is a meeting of the Permitting and
4 Enforcement Committee. We'll start out with a roll call.

5 Secretary, call the roll, please.

6 SECRETARY KUMPULAINIEN: Jones?

7 COMMITTEE MEMBER JONES: Here.

8 SECRETARY KUMPULAINIEN: Peace?

9 COMMITTEE MEMBER PEACE: Here.

10 SECRETARY KUMPULAINIEN: Paparian?

11 CHAIRPERSON PAPARIAN: Here. We're all here.

12 Any ex partes?

13 Mr. Jones.

14 COMMITTEE MEMBER JONES: Just Mr. Cupps on C&D.

15 COMMITTEE MEMBER PEACE: I have none.

16 CHAIRPERSON PAPARIAN: And I just said hello to
17 Mr. Cupps.

18 We have a fairly short agenda today, although we
19 have a couple timing-related issues. I have to be out of
20 here in about 25 minutes to get over to the Capital to
21 testify at a hearing over there. So we'll try to get
22 through as much as we can before I go. And then I think
23 there are some items that are more -- either informational
24 items or items that a full Committee isn't necessary.
25 Ms. Peace has agreed to chair the Committee when I go as

1 long as she can be here, although she has some personal
2 issues and needs to leave early herself. So we'll do the
3 best we can to get through everything today.

4 And as far as the ADC item, my understanding is
5 that we don't all have to be here for that part of the
6 hearing, but that we can refer back to the transcripts on
7 that one. And I believe Mr. Jones will be here for that
8 if both of the rest of us have to go.

9 In terms of the order in which we'll take things
10 up, I think we'll have the Deputy Director's report. Then
11 it's my intention to go to Item 7, which I think is a
12 fairly short item, and then jump to Item 10 to make sure
13 that all of us can be here for that. And then go back to
14 Item 9, then 11, and then end with the ADC item, Item 8.
15 And I'm using the Board agenda item numbers on that. If
16 that confused anybody, we'll go back through that at some
17 point as we get into the agenda.

18 Howard, have you got anything?

19 DEPUTY DIRECTOR LEVENSON: Good afternoon,
20 Mr. Chair, and Committee members.

21 In the interest of time -- I did have a number
22 have items I was going to report to you on. I'll very
23 briefly summarize those and can get you more information
24 as you need them.

25 As you know, this afternoon we'll be having a

1 public hearing on the ADC regulations. We did have
2 workshops on those regulations earlier last month on June
3 9th and 23rd, and I wanted to let you know in conjunction
4 with that we've also conducted a series of training
5 workshops for LEAs on ADC around the state. We had six
6 different workshops where we just talked about the
7 existing ADC regs, operational issues, and got input on
8 the proposed rule making.

9 In addition, we also did finish the last in a
10 series of seven workshops on landfill gas training for
11 LEAs. And both the ADC and the LEA training sessions are
12 eligible for continuing education credits under the SWANA
13 certification program. So those were significant training
14 efforts that we just finished up.

15 I wanted to secondly let you know about the
16 status of some of the legal disposal sites we've cleaned
17 up in the past, four in particular down in San Bernardino
18 County, the so-called Route 66 sites, which are Amboy,
19 Shamblis, and Essics, and the Nipton sites. These are
20 sites that for years were community dumping grounds. The
21 Board approved clean up of them in April of 2000, and we
22 completed the cleanup in spring of 2002. I bring these up
23 because one of the concerns of our solid waste clean up
24 program is to ensure once we clean up a site it stays
25 relatively clean and it's not used for dumping anytime

1 after the clean up. And BLM, who's our partner on this,
2 has reported just last week that these four sites remain
3 very clean, free of dumping, and at one of them you can't
4 even tell where the original site was. So that's just an
5 ongoing concern for us to keep our cleanup sites cleaned
6 up.

7 Last item I want to mention right now is just the
8 status of Florin-Perkins. It's still one of our high
9 priority sites, and we continue to monitor this and work
10 with the LEA on additional enforcement actions. However,
11 due to the appeals process on AB 59 and some Superior
12 Court rulings -- I believe it was Superior Court -- on
13 requirements leading up to the hearing panel itself, there
14 has to be some pre-panel hearings. And as a result of
15 that and the Board of Supervisors vacation schedules, the
16 AB 59 hearing date is now October -- October 10th. So
17 this continues to be a problem for us and the LEA. I
18 think both sides are doing as much as they can to deal
19 with this site, but we're hamstrung by the process.

20 The LEA is also working with trying to put
21 together kind of a cooperative enforcement task force with
22 the AG's Office -- I mean the Deputy District Attorney's
23 Office, Sacramento City Fire department, Planning and Code
24 Enforcement, and others so they can be as coordinated as
25 possible. So that is Florin-Perkins, the ongoing saga.

1 COMMITTEE MEMBER PEACE: At the Florin-Perkins
2 site, has anybody been out there to see if the owner has
3 taken any responsibility at all to start cleaning up any
4 of the mess out there?

5 DEPUTY DIRECTOR LEVENSON: It's our
6 understanding -- we will probably have someone go out this
7 week again. There has been some movement of material on
8 the site, and the operator is not bringing in new
9 material. But we're not sure whether the material is just
10 being moved around or actually being transported off site.
11 So we need to do some follow-up on that.

12 So with that, I can get you more information on
13 any of those if you have any questions.

14 CHAIRPERSON PAPARIAN: I think Mr. Jones has a
15 question.

16 COMMITTEE MEMBER JONES: Is the decision in
17 Superior Court just in regards to the Florin-Perkins site
18 or to the AB 59?

19 DEPUTY DIRECTOR LEVENSON: It's specific to the
20 Florin-Perkins.

21 COMMITTEE MEMBER JONES: Was it a lack of
22 information ahead of time? I mean, it seems like it's
23 pretty clear cut.

24 DEPUTY DIRECTOR LEVENSON: I will have to get
25 back to you on that, Mr. Jones. But I believe it has to

1 do with the membership of the hearing panel and some of
2 the other procedural issues on that. So they have to do
3 some pre-panel -- prehearing panel hearings. I'll
4 follow-up with you on that, though.

5 CHAIRPERSON PAPARIAN: I think there's pretty
6 wide interest in that. Maybe either let us all know or
7 maybe another report at the Board meeting.

8 DEPUTY DIRECTOR LEVENSON: That's all I have for
9 this afternoon.

10 CHAIRPERSON PAPARIAN: I think we'll jump again
11 first into Item C on our agenda, which is Item 7 on the
12 Board agenda. We'll go from there to Item F, which is
13 Item 10 on the Board agenda; after that, Item E which is
14 Item 9 on the Board agenda; after that, Item G which is
15 Item 1 on the Board agenda. And then we will end up with
16 Item D, which is the ADC item, which is Item 8 on the
17 Board agenda. And I'm sorry to have to juggle the agenda
18 like that, but we've got a couple things that have come up
19 this morning where we have to accommodate a couple of our
20 schedules. So go ahead with Item C.

21 DEPUTY DIRECTOR LEVENSON: Item C, number 7 is
22 consideration of revised full solid waste facility permit
23 transfer processing station for the Greenwaste Recovery
24 Facility in Santa Clara County. And Beatrice Poroli will
25 be presenting that.

1 MS. POROLI: Good afternoon.

2 The facility is owned and operated by Greenwaste
3 Recovery, Incorporated. The proposed permit is to allow
4 changes in design and operation of the facility.
5 Specifically, the changes involve the use of one bunker
6 for food waste storage with the removal frequency of all
7 the food waste every 16 hours, instead of the current
8 practice of the use of two bunkers for the storage waste
9 and removal frequency of 24 hours.

10 Board staff reviewed the permit application
11 packet and has determined the following: The design and
12 operation of the facility are consistent with the state
13 minimum standard; the facility's identified in the City of
14 San Jose's nondisposal facility element; and the
15 requirements of the California Environmental Quality Act
16 have been complied with.

17 Therefore, in conclusion, the staff recommend
18 that the Board adopt solid waste facility permit decision
19 2003-380 concurring in the issuance of solid waste
20 facility permit number 43AN0019. Representatives of the
21 LEA and operator are present to answer any questions you
22 may have.

23 CHAIRPERSON PAPARIAN: Any questions members?

24 Mr. Jones.

25 COMMITTEE MEMBER JONES: I'll move adoption of

1 resolution 2003-380, consideration of revised full solid
2 waste facility permit for the Greenwaste Recovery Facility
3 in Santa Clara.

4 COMMITTEE MEMBER PEACE: Second.

5 CHAIRPERSON PAPARIAN: There's been a motion and
6 a second.

7 Secretary, call the roll.

8 SECRETARY KUMPULAINIEN: Jones?

9 COMMITTEE MEMBER JONES: Aye.

10 SECRETARY KUMPULAINIEN: Peace?

11 COMMITTEE MEMBER PEACE: Aye.

12 SECRETARY KUMPULAINIEN: Paparian?

13 CHAIRPERSON PAPARIAN: Aye.

14 And this will be a candidate for consent.

15 We'll now move to Item F, which is Item 10 on the
16 Board agenda.

17 DEPUTY DIRECTOR LEVENSON: If I could have the
18 PowerPoint -- thank you.

19 (Thereupon an overhead presentation was
20 Presented as follows.)

21 DEPUTY DIRECTOR LEVENSON: I'll be presenting
22 this item. And in the interest of time, we're going keep
23 this presentation very short and just get straight to what
24 we're asking you today.

25 This is, as you know, a follow-up or a follow on

1 from request from the Committee a couple months ago to
2 look at the applicability of actually 14 requirements that
3 were newly adopted in the construction, demolition, and
4 inert debris processing regulations and to assess their
5 possible application to the regulation of other solid
6 wastes that are under the Board's -- well, solid waste.

7 --o0o--

8 DEPUTY DIRECTOR LEVENSON: What we did in the
9 item -- it's a lengthy item. It was only made available
10 to you on Thursday morning. So this is really, in our
11 view, just a first crack at analyzing these 14
12 requirements and their potential applicability. In the
13 item that's before you for each one, what we did -- and
14 they kind of go through in order. There's 14 sections in
15 there. We describe the rationale for including them in
16 the first place in the C&D inert debris processing
17 regulations that the Board approved and that are now in
18 effect.

19 Then what we did was for each requirement we did
20 a first analysis of their possible applicability to seven
21 other regulatory packages which are listed here on this
22 screen that includes the phase two C&D regulations which
23 we'll be discussing separately this afternoon.

24 --o0o--

25 DEPUTY DIRECTOR LEVENSON: And in each one of

1 those sections, we tried to look at the implications of
2 applying these specific requirements in terms of its
3 affect on businesses, operating conditions, LEAs, EJ,
4 public health and safety, whether there were overlaps with
5 other agencies, and implications for diversion.

6 Each requirement that -- the text for each
7 requirement ends with a summary paragraph, and those
8 paragraphs are summarized in Attachment 1 for quicker
9 reference.

10 --o0o--

11 DEPUTY DIRECTOR LEVENSON: This is a pretty
12 complex item. As I say, this is just our first crack at
13 it. And I think the main point that we -- really, the
14 main things we want to get at today is that we think
15 further study is necessary. We need to get some feedback
16 from stakeholders about the applicability of these to all
17 or any of the regulatory packages. And our suggestion is
18 that you direct us to get -- to conduct some workshops
19 with stakeholders in the late summer/fall timeframe, get
20 feedback on not only categories two and three as the slide
21 says, but as well as the other requirements that are
22 listed in the item, and that we return to you in the
23 probably November timeframe, thereabouts, with more
24 specifics, analysis, and recommendations.

25 After that, we could if you wish, do further work

1 that could involve starting a rule making, if needed. It
2 would be your call at that time. So we can certainly have
3 more discussion today if you wish. We had Bob Holmes,
4 Mark de Bie, Allison Spreadborough, and Michael Bledsoe,
5 and myself all worked on the item. So depending on your
6 questions, they could come up and we can try to answer
7 anything.

8 CHAIRPERSON PAPARIAN: So the real direction
9 you'd be looking for would come in the fall.

10 DEPUTY DIRECTOR LEVENSON: Correct.

11 CHAIRPERSON PAPARIAN: What you're looking for
12 today is just the okay to proceed with some meetings
13 and/or workshops with stakeholders to further flush out
14 some of the ideas here.

15 DEPUTY DIRECTOR LEVENSON: Correct.

16 CHAIRPERSON PAPARIAN: Any questions of staff
17 before we have witnesses? We have three people that want
18 to speak on this item.

19 Okay. We'll start with Justin Malan, CCDEH.

20 MR. MALAN: Good afternoon, Mr. Chairman,
21 members. Justin Malan with the CCDEH, the LEAs.

22 I just wanted to thank you and your staff for
23 recommending this resolution. We did express some concern
24 about particularly some of the last-minute add-ons to the
25 first phase of C&D. I know it was a difficult subject,

1 and I think this is a very appropriate way of dealing with
2 it. I think we'll have an opportunity to look at the
3 applicability of some of these provisions not only for
4 other aspects of solid waste management, but also the C&D
5 reg phase two that's coming out. So we wholeheartedly
6 supported that.

7 And just FYI, CCDEH is supporting a provision in
8 a bill this afternoon, maybe the same bill you will be
9 testifying on, Montanez Bill AB 1497 which hopefully will
10 take care of the public notification provision that was
11 part of this discussion. We feel that if we ensure that
12 there is a proper public notification to the public and
13 affected landowners around solid waste facility, some of
14 the issues that were tackled in the phase one and possibly
15 phase two will be addressed. So thank you, and we fully
16 support that and look forward to the workshops. Thank
17 you.

18 CHAIRPERSON PAPARIAN: Thank you, Mr. Malan.

19 Next will be Gregg Pirie, Napa County LEA. And
20 as he's coming up to testify, for the record, I'll be
21 testifying on SB 20, the e-waste bill.

22 MR. PIRIE: Good afternoon. Greg Pirie, Napa
23 County LEA and also chair of the Enforcement and Advisory
24 Counsel.

25 We definitely echo what Justin said about the

1 workshop. We would definitely like to be a part and talk
2 about everyone of these. LEAs aren't exactly opposed to
3 any of them, per se, but we just want to make sure they're
4 done correctly. To get specific, public hearings, we
5 definitely want to have a conversation on that to make
6 sure that whatever is put in the regulations that it can
7 also be able to handle the time frames of the permits that
8 we have coming before you. So definitely in favor of
9 that. Thanks.

10 CHAIRPERSON PAPARIAN: Thank you. And then
11 Mr. Chuck White, Waste Management.

12 MR. WHITE: Thank you, Mr. Chairman, members of
13 the Committee.

14 Very briefly, I'd like to turn your attention to
15 page 10-3 of the agenda item and the discussion related to
16 the issue of source separated and separated for reuse,
17 particularly as it may be applicable to the C&D inert
18 debris disposal regulation. The staff indicates they
19 haven't considered applying that to the current regulatory
20 proposal, but it might be something that would warrant
21 your consideration. And I would certainly ask you to
22 consider whether it makes sense to determine whether or
23 not particularly clean inerts that are used for structural
24 engineering fill, if there is a degree of separation or
25 separation -- source separation or separation for reuse

1 for this material. Not necessarily to result in any
2 lesser requirements, but with the idea that perhaps inert
3 engineered fills while they may not be full blown
4 recycling, may not be full blown disposal either, and
5 maybe it's more of kind of a gray area, middle of the
6 ground.

7 And perhaps the argument that there is an element
8 of source separation or separation for reuse is applicable
9 to this kind of activity and perhaps it would warrant not
10 calling this a disposal activity in your regulations.

11 I'll come back and talk about that briefly in
12 your next agenda item. But I did want to point this out.
13 This is relevant to a rule making package you have under
14 process right now. And I think -- I would ask the Board
15 to consider and hopefully have an open discussion and
16 dialogue about whether this makes sense. Thank you.

17 CHAIRPERSON PAPARIAN: Thank you. That's all the
18 public comments.

19 Anything from members?

20 What staff has asked is basically whether they
21 should proceed with soliciting comments and possibly
22 having a public workshop in order to put together a fuller
23 proposal for our consideration this fall.

24 COMMITTEE MEMBER JONES: That's fine.

25 CHAIRPERSON PAPARIAN: Ms. Peace.

1 COMMITTEE MEMBER PEACE: First, I'll like to
2 thank the P&E staff, Allison, Mark, Howard. I know this
3 was a lot of work. And I really appreciate all the time
4 and effort you put into this. And I think we've heard
5 some good comments from stakeholders, and I would like to
6 go ahead with what Howard suggested, to go ahead and have
7 some workshops. I think the LEAs and the stakeholders can
8 give us some input on these things and go from there.

9 CHAIRPERSON PAPARIAN: And I agree. And to me
10 this is a priority to try to move this through. So I know
11 you mentioned November. I don't know if there's any way
12 to get it done a little sooner.

13 DEPUTY DIRECTOR LEVENSON: Much earlier than
14 that, putting that information together into an agenda
15 item that makes some sense for you would take a little bit
16 of time after that.

17 CHAIRPERSON PAPARIAN: Thank you.

18 COMMITTEE MEMBER PEACE: Thank you.

19 DEPUTY DIRECTOR LEVENSON: Thank you.

20 CHAIRPERSON PAPARIAN: I think the next item we
21 were going to go back to Item E, which is Item 9 on the
22 full Board agenda which is related to some regulations
23 changes related to LEAs.

24 DEPUTY DIRECTOR LEVENSON: Correct. This is an
25 item on discussion and request for direction to notice for

1 45-comment period proposed amendments to regulations for
2 local enforcement agencies certification requirement for
3 technical expertise.

4 Gabe Aboushanab will be presenting that item, and
5 this concerns just one part of the LEA technical
6 requirements.

7 MR. ABOUSHANAB: Good afternoon, Committee
8 members. Current regulations allow small LEA
9 jurisdictions, those with the population of 50,000 or
10 less, to utilize a workload analysis to determine staffing
11 level. Typically, the smaller jurisdictions don't warrant
12 enough to have a full-time LEA person. Therefore, a
13 workload analysis subject to Board approval, of course,
14 allows that jurisdiction to figure out exactly the amount
15 of hours needed to fulfill LEA duties.

16 The problem with the existing regulations is that
17 they would require a jurisdiction's population creeps past
18 50,000 to have at least one full-time LEA staff dedicated
19 to solid waste. That's even if the workload did not
20 increase enough to justify the time.

21 To remedy this issue and relieve this undue and
22 unwarranted burden, staff are proposing a minor change to
23 existing language which would simply allow an LEA of this
24 type of jurisdiction to continue to use the workload
25 analysis, subject to Board approval, of course, to

1 determine the actual staffing need. And the new
2 population cap would be at 80,000, instead of 50,000.
3 That's in your attachment at page 2, subsection B. It's
4 the underlying language.

5 CHAIRPERSON PAPARIAN: Mr. Jones has a question.
6 Is he ready to move it?

7 COMMITTEE MEMBER JONES: I think it ought to go
8 out for 45 days. It makes sense. The populations are
9 growing, the workload, the infrastructure. It makes
10 sense.

11 CHAIRPERSON PAPARIAN: Justin Malan, you had a
12 comment. If we're just going to move it forward, are you
13 happy with that?

14 MR. MALAN: Thank you. And in full support.
15 Thank you, sir.

16 CHAIRPERSON PAPARIAN: Any questions?

17 I think we're all happy with it moving forward,
18 so go ahead.

19 The last two items on the agenda, Item G, which
20 is Board Item 11 related to the C&D inert facilities --
21 I'm going to turn over the gavel to Ms. Peace. I have to,
22 as I said before, run over to the Capitol for a hearing I
23 need to testify at.

24 COMMITTEE MEMBER PEACE: Mr. Levenson, would you
25 like to introduce Item G?

1 DEPUTY DIRECTOR LEVENSON: Sure. This item is an
2 item we've all been waiting for with bated breath. It's
3 discussion and request for rule making direction on
4 noticing revisions to the proposal regulations for
5 construction and demolition waste and inert debris
6 disposal regulatory requirement for an additional comment
7 period.

8 And Allison Spreadborough will be making the
9 initial presentation on this for the Committee.

10 Allison.

11 MS. SPREADBOROUGH: Good afternoon, Committee
12 members. My name is Allison Spreadborough.

13 The proposed construction, demolition waste and
14 inert debris disposal regulations were noticed with the
15 Office of Administrative Law on January 17, 2003, and the
16 45-day public comment period closed on March 3rd, 2003.
17 The public hearing was held in Sacramento on April 7th,
18 2003.

19 Based on 45-day public comments and comments from
20 the Diamond Bar workshop and Sacramento work group, staff
21 have made minor technical changes to the regulation
22 package for clarification based on risks to public health,
23 safety, and environment, in addition to certain new
24 requirements made from the phase one C&D processing rule
25 making. Staff did not put all the phase one requirements

1 into this package because most of the new requirements
2 were not applicable based on the differences of processing
3 versus disposal.

4 In an effort to be consistent with the phase one
5 construction and demolition and inert debris regulations
6 processing regulations, staff has included 5 of the 14 new
7 requirements in the phase two disposal regulation. The
8 five new requirements are as follows: Surprise random
9 inspections; a requirement for sales; the three-strikes
10 provision; a public hearing requirement for the
11 registration and full permit tiers; and a requirement for
12 an injury, illness, and prevention plan and a disposal
13 facility plan versus the application as required in the
14 phase one regulations.

15 The level of Board review and oversight for
16 disposal operations and facilities subject to these
17 proposed regulations is reduced for inert debris
18 Engineered fill operations and inert debris Type A
19 disposal facilities from what is currently required under
20 full solid waste facilities permit. And that's what's
21 provided in the lower tiers.

22 Construction, demolition waste disposal
23 facilities are placed in the full permit tier. The
24 regulations also define other activities that are not
25 subject to Board regulation. Many disposal sites subject

1 to Board oversight under those regulations are those in
2 the inert debris engineered fill operation category and
3 are placed in the EA notification tier. This tier
4 placement is based on the risks posed by those operations
5 to the public health, safety, and the environment.

6 Permitting and Enforcement Division staff have
7 consulted with staff in the division of Planning and Local
8 Assistance and have determined the following: That as an
9 operation is not required to obtain a solid waste facility
10 permit and as requirement for disposal reporting
11 facilities only, operations do not need to participate in
12 a disposal reporting system. Staff have also determined
13 that only permitted solid waste disposal sites are
14 required to pay Board of Equalization disposal fees.
15 Therefore, disposal information in the notification tier
16 would not need to pay the fees or participate in the
17 disposal reporting system.

18 Further consultation with the Division of
19 Planning and Local Assistance indicates in September 2002
20 Governor Davis signed Assembly Bill 2308 into law. The
21 bill allowed the inert waste that is sent to three
22 Board-permitted inert facilities from being considered to
23 be disposal for only the purposes of diversion until the
24 Board has adopted these regulations and they become
25 effective. These facilities are Cal Met Reliance Pit

1 number two, New Way, and Peck Road Landfills, all located
2 in Los Angeles County. Assembly Bill 2308 also provides
3 an opportunity for the Board to consider how inert
4 materials should be counted by the Board during
5 development of the phase two C&D waste and inert debris
6 disposal regulations. The bill does not predetermine the
7 outcome of these regulations.

8 Legislation passed in 2001, Assembly Bill 173,
9 related to the payment of Board of Equalization fees for
10 recycled materials and inert waste requires the Board to
11 adopt and file with the Secretary of State January 1st,
12 2004, regulations that establish an appropriate level of
13 on site and the management of C&D waste and the management
14 of inert waste at mine reclamation sites. Board staff
15 will make every effort to ensure these proposed
16 regulations are operative by January 1st, 2004, and have
17 determined that the Board must approve these proposed
18 regulations by September of this year to meet the
19 operative date set in statute.

20 Staff recommends Option 1, direct staff to notice
21 the proposed regulations for an additional 15-day comment
22 period. This includes the staff presentation.

23 COMMITTEE MEMBER PEACE: Okay. Mr. Jones, did
24 you have anything to say before we move to public
25 testimony?

1 Okay. I appreciate if you keep your comments
2 brief, preferably under three minutes.

3 Gregg Pirie.

4 MR. PIRIE: Good afternoon, again. Greg Pirie
5 Napa County LEA.

6 Just kind of referring back to the previous item,
7 Item 10 and the items that were taken over from phase one
8 and put into phase two, obviously the workshop is not
9 going to happen in the next, you know, 15 days. But the
10 items of great concern, especially one, is public hearing,
11 just to be able to implement that, if put in the
12 regulations. I think this is a pretty big issue. Even
13 though I'm only commenting from the Napa County LEA, I
14 have heard from many constituents it's going to be very
15 difficult to implement, is one example.

16 If we did have a new public hearing with a 10-day
17 notice, whether it's 300 feet, 1,000 feet circumference,
18 anything like that, 30 days to review the permit. Somehow
19 that would have to fit into that time frame for permit
20 review. Those are some of the complications we're going
21 to have to deal with, if implemented with this kind of
22 language.

23 If I would recommend anything, I would pull this
24 and strike this until we can either go through a workshop
25 and find out -- not opposed to public hearing, but have

1 some language that would be very applicable that would fit
2 into the time frames. And I'm sure a lot of LEAs would be
3 much happier with that. That's just one example. If that
4 could be taken care of, that would be fabulous. Thank you
5 very much.

6 COMMITTEE MEMBER PEACE: Okay. We have Tom
7 Davis.

8 MR. DAVIS: Committee members, good afternoon.
9 My name is Tom Davis with Justice and Associates.

10 First of all, I want to thank staff for spending
11 a lot of delegated time to work with the stakeholders on
12 the disposal issues. The regulations have reflected their
13 understanding of our concerns in trying to make this
14 package more practical while not undermining the intent of
15 these regulations.

16 I have three comments. One has to do with the
17 final cover requirement. This was added -- this
18 requirement was added recently to the regulations. We
19 found that it was an arbitrary requirement. However, the
20 language that was -- the version that was issued last week
21 makes it a little bit easier for us to tolerate. However,
22 we envision a situation where an enforcement agency may
23 deem that no final cover is necessary, and we believe the
24 language as it's currently proposed doesn't give the EA
25 the opportunity to determine that a final cover is not

1 necessary. So we are recommending that on line 18 that
2 the words "if any" --

3 COMMITTEE MEMBER JONES: What page?

4 MR. DAVIS: Sorry. Page 8, line 18. The words
5 "if any" be inserted after the words "final cover" and
6 before "as determined." This gives the EA the opportunity
7 to determine if any final cover is necessary. Again, page
8 8, line 18, inserting the words "if any" after the words
9 "final cover" and before "as determined."

10 Our second point has to do with the use of
11 scales. In general, we believe that scales are not
12 necessary for the annual reporting that is going to be
13 required for inert debris engineered fill operations. As
14 a matter of fact, I would like to refer to one of the
15 state minimum standards that is referred to in this
16 article. And it's referred to at Section 17388.2 (d), and
17 that particular state required -- minimum state
18 requirement is Section 20510. And it states, "Each site
19 operator shall maintain records of weights or volumes
20 accepted in a form and manner approved by the EA. Such
21 records shall be submitted to the EA upon request accurate
22 to within 10 percent and adequate for overall planning
23 purpose and forecasting the rate of site filling."

24 And referring to that state minimum standard and
25 the accuracy requirement, there is no need for scales. We

1 believe the initial investment, especially for facilities
2 that are only going to be open for a handful of years,
3 those up front costs cannot be amortized. But also the
4 ongoing costs of operating scales, the calibrations, the
5 certification, the additional paperwork is not necessary
6 for inert debris engineered fill operations. So please
7 take that into consideration and please refer to that
8 state minimum standard. Again, that is 20510.

9 Lastly, we understand -- and correct me if I'm
10 wrong -- but as these regulations stand, the folks that
11 will be regulated by this have 30 days to implement all
12 those provisions as they are currently understood. And we
13 feel that that is inadequate, and we're recommending that
14 a minimum of six months be taken into consideration for
15 all the physical improvements and paperwork that will be
16 necessary to fulfill before they can continue to operate
17 as these regulations are proposed.

18 Those are our three points. Thank you very much.

19 COMMITTEE MEMBER JONES: Madam chair.

20 COMMITTEE MEMBER PEACE: Mr. Jones.

21 COMMITTEE MEMBER JONES: On your first issue, you
22 said page 8, line 18 on the cover --

23 MR. DAVIS: Yes.

24 COMMITTEE MEMBER JONES: And it says -- I mean,
25 the version I have says, "Three feet of compacted soil

1 above the disposal area or with other final cover as
2 determined by the EA."

3 MR. DAVIS: Right.

4 COMMITTEE MEMBER JONES: You're asking that we
5 say if the EA determines.

6 MR. DAVIS: Right. To me, it's not clear that
7 the EA has the option to say, "You know what? For this
8 particular case, final cover is not necessary at all,"
9 because it's an industrial use, for example, that's going
10 to have a lot of building square footage, a lot of parking
11 lot square footage, and the second -- or next productive
12 use is going to happen very soon. The way it's worded, as
13 I understand it, the EA doesn't have the flexibility to
14 say no final cover is necessary.

15 COMMITTEE MEMBER JONES: But as you're doing your
16 fill plan for an inert site, just like any other site,
17 you've got a height limit that you're going to go to. So
18 somewhere in your plan you usually determine what's going
19 to be the last cover that goes on that before. And it
20 seems to me it would be at that point that the EA would be
21 discussing with you, you know, what that cover requirement
22 needs to be. And it's all going to be predicated on what
23 the end use is and what the EA thinks is reasonable.

24 MR. DAVIS: I do not disagree with that.

25 COMMITTEE MEMBER JONES: I have no problem with

1 the language that's in there. I don't see that the EA
2 can't use their judgment as to what the final cover has to
3 be. But I think -- I think that it's a little too easy to
4 fill something up with concrete and say, "We're done,"
5 without that. I think the EA needs to be aware early when
6 you get up to grade so they know what that material has to
7 be, irregardless of what you're going to build on it.
8 It's engineered fill, you know. I mean, if it's an
9 engineered fill, you've got an engineer that's telling you
10 how you're putting that stuff in place anyway. There's
11 going to be a requirement to have a finer material at the
12 top, irregardless -- for your final cover, irregardless of
13 what that final end use is going to be.

14 MR. DAVIS: So are you saying then that the EA
15 has, with this language, the opportunity to decide at some
16 point in time, early on preferably, that a final cover may
17 not be necessary?

18 COMMITTEE MEMBER JONES: No. I'm saying they've
19 got the opportunity to say as you're doing your fill
20 pattern, "Start making sure you've got material that's six
21 inch mine that's going into the last three feet because
22 that's going to be your final cover, compacted to whatever
23 the compaction rate is." They're going to have that
24 opportunity. I think by putting in the words you want, it
25 could be left to the very end when it's going to be too

1 late. And that bothers me a lot more than what's written
2 in here. Because the LEA still has the discretion to
3 determine what it is, but they've got to be notified
4 earlier. There's too many times people wait until it's
5 too late, and then they say, "We'll live with it." This,
6 I think, gives people the opportunity to do their work
7 so --

8 MR. DAVIS: Okay.

9 COMMITTEE MEMBER PEACE: Also I'd like to ask
10 staff to clarify the scale issue. I was, I guess, under
11 the impression that under the engineered fill category
12 that the scales were not applicable in that category but
13 they were in the other two.

14 MS. SPREADBOROUGH: It actually is applicable in
15 the inert debris engineered fill operation.

16 COMMITTEE MEMBER PEACE: Thank you.

17 MR. de BIE: If I may. Mark de Bie with
18 Permitting Inspection. And we're focusing on scales. The
19 requirement isn't scales. It does leave the option to
20 meet the requirement by having weight records. So if the
21 material is being weighed by the generator and then
22 brought to the site, if those records could be brought in,
23 that would be appropriate. If the operator has access to
24 scales off site, there are places where you can contract
25 to utilize scales, and that would be appropriate. We're

1 not requiring scales to be built at these sites. That's
2 certainly one option, but there is some flexibility to
3 meet the requirement in another way.

4 COMMITTEE MEMBER PEACE: Thank you.

5 Next speaker, Mark Aprea.

6 MR. APREA: Madam Chair, Mr. Jones, Mark Aprea
7 here on behalf of Republic Services.

8 Republic services was the sponsor for Assembly
9 Bill 2308 and along with others in the solid waste
10 industry and local agencies supported the measure.

11 Ms. Peace, for purposes of giving you some
12 background on what led us to sponsor the bill and what
13 brings us before you today is that what occurred was that
14 from time to time and frequently enough that it mattered a
15 lot to our local government customers, there would be
16 projects that were outside the control of the local
17 jurisdiction, particularly state road projects in which
18 either roads were deconstructed or where there were new
19 roads being constructed which degenerated in a large
20 amount of inert material that was then sent to varying
21 places where it to be placed, some of which were mine
22 reclamation facilities and some of which were one of the
23 three facilities that Allison mentioned previously, that
24 while they were mine reclamation facilities, due to local
25 political consideration also had to receive a solid waste

1 facility permit. And as such, material that was outside
2 the local agency's jurisdiction was being sent to one of
3 those three facilities, and in a surprise to the local
4 agencies ended up showing as disposal. And therefore,
5 skewing their diversion numbers for purposes of AB 339.

6 AB 2308 was introduced to provide an opportunity
7 to address this issue and, in essence, not have this
8 unintended consequence afflict local jurisdictions
9 predominantly throughout Southern California, although it
10 was certainly an issue that in theory could apply
11 statewide.

12 First of all, in terms of our comments, I want to
13 thank all of the Waste Board staff and in particular
14 Allison for her making herself and other staff members
15 available on this issue, both individually as well as
16 through the stakeholder meetings. And I think we've aired
17 these matters out in those stakeholders meetings, but we
18 wanted to bring those to your attention now. And that is
19 to take a look as you go through this next phase of the
20 regulations of dealing with the issues of unintended
21 consequences that existed prior to AB 2308.

22 Now, while we won't have the surprise of one load
23 going to a permitted solid waste facility and triggering
24 disposal numbers, we, in essence, could have that occur on
25 a broader basis in the event that one of these mine

1 reclamation facilities which is now an engineered fill for
2 whatever reason ceases to operate in that same manner
3 forcing them into a higher tier, which would result in
4 that material being counted as disposal.

5 What we have suggested to staff is that they take
6 a look at the entire universe of mine reclamation
7 facilities, and let's understand now from a snapshot
8 picture at least have an estimate as to which facilities
9 under current circulations might take in Class A inert
10 material and count it as disposal under the proposed
11 regulations before you. So that this Board, as well as
12 local jurisdictions and the operators that service those
13 local jurisdictions, would understand what the universe is
14 out there.

15 Second, we have suggested that in the event that
16 a facility for whatever reason engages in activity -- or
17 lack of activity, rather, that now causes that material to
18 be counted as disposal, that there's some way of notifying
19 local jurisdictions so they can take preventative action
20 or curative action, if you would, to perhaps notify state
21 agencies or others that might be operating outside their
22 jurisdiction what the consequence of this waste -- or this
23 Class A inert material going to these facilities. So we
24 don't find ourselves, if you would, fighting the exact
25 same circumstances that led to the introduction and

1 enactment of AB 2308.

2 And one of the ways was also to bring in the mine
3 reclamation facilities and make sure that they were aware
4 of these regs, that they had a working understanding of
5 them, and furthermore, that they would understand what
6 might be the market reaction in the event they chose not
7 to operate as an engineered fill. So if they chose not to
8 operate as an engineered fill, clearly folks would be
9 dissuaded from placing their material at one of those
10 facilities.

11 So those are our suggestions. We will formalize
12 them, of course, in our written comments to you, but
13 wanted to take this opportunity today, particularly for
14 you, Ms. Peace, in light of this being something that
15 occurred prior to your being appointed to the Board. I
16 know Mr. Jones and I had countless conversations on the
17 measure as it was making its way through the Legislature.
18 And I'll stop and answer any questions that you may have.
19 Otherwise, I'll reserve it to our written comments later.

20 COMMITTEE MEMBER PEACE: Thank you.

21 Any questions?

22 COMMITTEE MEMBER JONES: I just have two. The
23 treatment by the staff in an inert engineered fill now
24 calling it a notification tier, should take care of the
25 issues that were around 2308.

1 MR. APREA: That's correct.

2 COMMITTEE MEMBER JONES: Are you suggesting,
3 though, if somebody directs waste to a -- clean inert
4 material to a facility other than an engineered fill that
5 there be a notification to the cities?

6 MR. APREA: We have suggested that to staff
7 because otherwise then material could be sent to that
8 facility.

9 COMMITTEE MEMBER JONES: That facility being an
10 MSW landfill?

11 MR. APREA: It could be -- the scenario would be
12 as such. Let's say it is a facility that is an engineered
13 fill, falls within the notification tier. It changes its
14 practice in terms of what it's doing at some point
15 subsequent. The operator is unaware of the permits -- the
16 hauler is unaware of the practice of that facility that
17 may have changed its permit status --

18 COMMITTEE MEMBER JONES: Oh, okay.

19 MR. APREA: And, thereby, continues to send
20 material there and wouldn't find out until well over a
21 year later when the new disposal numbers come in. And
22 they are now surprised saying, "Well, we thought this was
23 a facility that was within the notification tier. We now
24 find it's got -- it's changed."

25 COMMITTEE MEMBER JONES: Okay.

1 MR. APREA: And similarly, that while there is no
2 guarantee in that circumstance, it at least puts the local
3 jurisdiction on notice that these facilities have changed
4 and thereby allows them to not only direct their own waste
5 differently, but it also may allow them then to work with
6 CalTrans or some other agency that may be generating waste
7 from that local jurisdiction to that facility and thereby
8 avoid the surprise that led to 2308.

9 COMMITTEE MEMBER JONES: Okay. Ms. Peace, I
10 know, has to leave to catch a plane. But there would be
11 under this permit package a requirement for a public
12 hearing. So if a facility in a notification tier went to
13 become an MSW landfill, whether it's C&D or whatever it
14 is, it would go through the notification tier which seems
15 to me that would be the city's responsibility anyway to be
16 aware of that. That should cover it. Right? Maybe we
17 have to send notice to all the cities that that thing is
18 changing. You know, as opposed to every load that goes
19 into this facility after it's changed. That seems a
20 little bit --

21 MR. APREA: I wasn't suggesting every load,
22 Mr. Jones. But rather that -- our experience is if we are
23 to use the three facilities in the San Gabriel basin, that
24 while most of the waste, you know, came within, you know,
25 close proximity, that you had, as an example the city of

1 Santa Monica sent a lot of material to one of those
2 facilities. You have facilities in Orange County sending
3 material to those facilities and they might not
4 necessarily -- they might not be placed on notice of the
5 change because they were operating outside the county or
6 outside of a close proximity.

7 What we're looking at here while we have a notice
8 provision here is we make sure that we don't, in essence,
9 have local jurisdictions and their haulers as well as
10 others surprised by some change in the operation resulting
11 in disposal numbers that weren't anticipated.

12 COMMITTEE MEMBER JONES: Got it.

13 COMMITTEE MEMBER PEACE: Thank you.

14 Next speaker is Justin Malan.

15 DEPUTY DIRECTOR LEVENSON: I think Justin had to
16 go over to the Capitol.

17 COMMITTEE MEMBER PEACE: We will go to Chuck
18 White.

19 MR. WHITE: Madam Chair, members of the
20 Committee. My comments are related to what I spoke to you
21 earlier on, on the previous agenda item, and that is
22 whether or not it makes sense to call inert debris
23 engineered fill a disposal activity or not. I recognize
24 that you put it into the -- proposed to put it into the
25 notification tier which alleviates the fee issues and the

1 disposal accounting issues, but you still -- the staff is
2 still proposing to call it disposal. And I don't think
3 it's even necessary or warranted.

4 And the question I want to pose to you is, "Has
5 there been enough source separation or separation for
6 reuse to continue to consider this kind of activity as --
7 while it may not be full-blown recycling, it's really not
8 disposal. It's somewhere in between. As the previous
9 legislation has pretty much taken this kind of activity
10 off the table, I would ask you to consider doing the same
11 thing in these regulations.

12 The only material you can put into clean inert
13 fills is rock, soil, fully cured asphalt, uncontaminated
14 concrete, glass, brick, ceramic, clay and clay products.
15 That's it. It's been source separated or separated so the
16 material going into these fills is only comprised of these
17 kinds of materials, and I think it warrants no longer
18 calling it a disposal.

19 If you turn to the actual regulations on page 3
20 and 4, in the definition of inert debris engineered fill
21 operation, on line 31 on page 3 it says, "means a disposal
22 activity." What I'm suggesting is you simply strike the
23 word "disposal" and say, "means an activity exceeding one
24 year in length." The word "disposal" really doesn't lend
25 itself for any reason. And I would ask that the Board

1 give consideration to striking that word. It also appears
2 one more place in the definition on line 12 on page 4.

3 When we've had discussions with the legal staff,
4 they made the argument that perhaps you didn't have the
5 authority -- anything that's placed on the land if it's a
6 waste has to be regulated as a disposal activity.
7 However, in both the fee legislation and in AB 2308 I
8 think the Legislature gave you the opportunity -- because
9 they specifically defined this kind of activity as
10 something that is not disposal in a solid waste landfill.
11 And that authority remains in place through to the point
12 where you adopt these regulations. So I don't believe
13 there's a need to specifically call this activity a
14 disposal activity.

15 You can still regulate it as you're proposing
16 too. I'm not suggesting you change any degree of
17 oversight or regulatory control. It just simply --
18 continue to put it someplace as a 'tweener, if you will.
19 It's not disposal. It's not recycling. Just don't recall
20 it either. And take it off the table with respect to any
21 possibility of being subject to fees or disposal
22 accounting system in the future.

23 There is an element of beneficial use because as
24 in the Board staff's own statement on page 11-6 of the
25 staff report, right in the middle of the page they say,

1 "This applies to site where disposal of subset of Type A
2 inerts" -- a subset meaning it's been separated -- "Type A
3 inerts results in a productive end use of the site."
4 There is an element of productive end use associated with
5 the use of this kind of material. What I'd ask the Board
6 to consider, it isn't strictly a disposal operation. It
7 does have elements of productive end use.

8 Thank you.

9 COMMITTEE MEMBER PEACE: Thank you. Our last
10 speaker is Joan Edwards.

11 MS. EDWARDS: Thank you. Today I am -- some of
12 my comments are on behalf of the Chandler's Sand and
13 Gravel and Inert Fill in Rolling Hills Estates in Southern
14 California. And then I do have some comments of my own
15 personally, rather than on their behalf.

16 Chandler's expects to be in the -- at least in
17 the notification tier since they will be an engineered
18 inert fill. They have voluntarily reduced their WDRs over
19 the years to restrict -- increasingly restrict the types
20 of materials which go into landfill. And we're all very
21 appreciative of all the time and effort that staff has
22 taken to respond to everybody's comments about engineered
23 inert fills and their placement, type of materials, and
24 the like.

25 One item that is of concern, and some other

1 people have mentioned it, is the 30-day requirement. The
2 whole issue of resolving all of the qualifications within
3 a 30-day time frame are particularly difficult. And in
4 fact, scales alone, to order, to get your software system,
5 to get everything up and ready, 30 days is a very, very
6 small period of time.

7 With regard to scales, Chandler's hopes -- they
8 would like to close for their intended end use and have
9 begun the process with the city within a year. That may
10 not be likely. It will likely be within two years. But
11 it really -- to have scales if you are a facility that is
12 going to close in a very short period of time amortizing
13 scales is a phenomenal problem. The smaller you are, the
14 bigger the problem is.

15 If there's any way in which there could be some
16 request -- a process by which one could request to be
17 allowed not to use scales for a short period of time,
18 Chandler's would very much appreciate that because they
19 are -- they have already begun the process within the city
20 to get approval for their intended development use for the
21 property.

22 On my own behalf, I would like to comment on two
23 issues. One is the issue of Type A facilities, and I'm
24 very, very appreciative that staff has removed the
25 reference to decomposable material and appears to be

1 tightening the requirements For type A somewhat. I'm
2 confused -- although Allison has assured me that the 10
3 percent of other allowable materials will not apply to
4 Type A facilities. And I'm assuming that that is true. I
5 wanted to raise the issue.

6 I do not agree with the issue of removing the
7 expression "disposal" from the definition of engineered
8 inert fill. We have spent years trying to strike a
9 delicate balance, saying it's neither -- for the purposes
10 of reporting and paying fees, it's neither disposal nor
11 diversion. And engineered inert fills do not have to
12 worry about paying fees, and they don't have to worry
13 about having it count as disposal. However, the staff and
14 Board have consistently said that they believe in highest
15 and best use and want to move toward that goal. And an
16 MSW landfill can have a beneficial end use, just as an
17 engineered inert fill can. We are burying it in the
18 ground. I think to tamper with this delicate balance at
19 this time would be inappropriate. Thank you.

20 COMMITTEE MEMBER PEACE: Thank you.

21 Mr. Jones, do you have anything to add?

22 COMMITTEE MEMBER JONES: No comments. Just that
23 I think we ought to move it out for 15-day comment period.
24 I heard some of the issues, but I think that this thing is
25 pretty well baked.

1 COMMITTEE MEMBER PEACE: When will this come back
2 again, in September/October?

3 DEPUTY DIRECTOR LEVENSON: We're trying to get it
4 back to you next month in August.

5 COMMITTEE MEMBER PEACE: Great. Thank you.

6 COMMITTEE MEMBER JONES: Madam Chair, just one
7 quick question.

8 The scale issue, does that go back to the C&D
9 transfer processing requirement? There, everything was
10 conditioned on the amount of material coming in. So we've
11 added it into this as a requirement.

12 MR. de BIE: That was one of the ones that we
13 carried over into phase two. And it's staff's position
14 that it should be debated, you know, within the context of
15 this regulation package if it's appropriate or not. So it
16 is a little ahead of the rest of the discussion relative
17 to all those issues. We do see some advances of having
18 this weight requirement tightened up in phase two. And
19 again, it doesn't require scales at the site. You know,
20 if weight records are made available, that meets the
21 requirement too.

22 COMMITTEE MEMBER JONES: It's the -- our
23 landfills don't have the requirement of C&D -- I mean, of
24 scales because of some of the -- you couldn't get scales
25 in there if you wanted to.

1 MR. de BIE: That's correct.

2 COMMITTEE MEMBER JONES: I think scales or scale
3 weight tickets at transfer stations was critical because
4 it was what we measured by. But there's no condition on
5 an inert Engineered fill or a C&D site based on tonnage
6 right.

7 MR. de BIE: Unlike the processing, there isn't a
8 link between tonnage and tier placement or state minimum
9 standard for that fact.

10 The reason why staff thought it would be a good
11 thing to have in these regs is one of the reasons the
12 Board was interested in having phase two disposal regs was
13 to get a better handle on the amount of material that's
14 out there, the C&D inert type debris materials. So scales
15 or weight records gives you better numbers than something
16 like in the landfill requirement, which basically allows
17 for conversion factors and even as read allows a 10
18 percent plus or minus in terms of accuracy. So certainly
19 weight records and scales give you better numbers.

20 COMMITTEE MEMBER JONES: A question for legal
21 counsel. If, in this 15-day period, that pretty much
22 locks in what's in here, or unless there's something
23 that's -- I mean, how hard is it to make a change?

24 STAFF COUNSEL BLOCK: Any change that would
25 result in a substantive change to requirements after the

1 end of this 15 day would require another 15-day comment
2 period. So scales -- for instance, a requirement there be
3 scales, it's going to depend on exactly what the Committee
4 and the Board would want to do. But, for instance, if
5 there's a requirement to have scales that we then remove
6 just to make it simple -- it's not necessarily what we're
7 talking about -- that would require another 15-day comment
8 period to change it. If we were adding some clarifying
9 language to flush out the other types of records that
10 might be acceptable, it's possible we could do that
11 without a 15 day. It would really depend on the details.

12 And since you asked me a question about the
13 scales, I think there was one other potential reason why
14 we might have included scales relating to some of the
15 diversion, counting the impacts there. In the past we've
16 had to make some adjustments. We haven't had some
17 accurate numbers in terms of trying to back some C&D
18 numbers out. So I'm not sure how much of a motivating
19 factor that was.

20 MR. de BIE: Certainly that's something that
21 could be looked at. Right now I believe the weight record
22 scale requirement is for all three tiers, notification,
23 registration and full, certainly they could be applied to
24 just the permit categories, registration and full and not
25 be applied to notification or variation. So that could be

1 looked at. I don't know if that kind of change would
2 require additional notice.

3 STAFF COUNSEL BLOCK: The context was where we
4 have jurisdictions that are suddenly seeing some surprises
5 in terms of increased tonnage, something that was alluded
6 to by an earlier commentor. And they've gone back and
7 determined it was a project they weren't aware of, where
8 the Board has looked at making adjustment to some numbers.
9 We've run into some interesting issues, sometimes trying
10 to figure out what that number is. So, again, there's
11 another place where it may come into play. It doesn't
12 mean there's not other ways to deal with it. But I think
13 that was another factor in terms of wanting the numbers to
14 be more accurate.

15 COMMITTEE MEMBER JONES: I just caution that
16 there are areas in the state that you can't -- number one,
17 you can't get scales on the property. It's not going to
18 work, even some portables. And number two is, you know,
19 you need something to power a scale. And in some cases
20 when you put them out at the site, they leave. They
21 disappear. And that gets very expensive. And for what
22 purpose? I mean, we have to have a reason, in my mind,
23 that validates spending that kind of money. And in some
24 cases I agree there ought to be scales. But there's some
25 that -- it's pretty tough. You can't get a truck on a

1 scale because of the way the thing is configured or you
2 couldn't -- you'd never keep a generator set around long
3 enough to ever power the thing. So just a caution.

4 DEPUTY DIRECTOR LEVENSON: Madam Chair, just one
5 point of clarification as to whether on the comments
6 regarding the 30-day noticing requirement whether we
7 should be seeking additional comment or making changes on
8 that, the version that goes out for 15-day comment.

9 MR. de BIE: Just to clarify, right now the regs
10 as written indicate that 30 days from approval by the
11 Secretary of State, they would be in effect. And I think
12 we have worked with Office of Administrative Law to have
13 longer periods of time for implementation. But 30 days is
14 typically the time frame.

15 But you did hear some testimony about some
16 difficulty in existing sites coming into compliance within
17 that 30-day period, so you may wish to give us direction
18 to explore a possibility of a longer time frame for
19 implementation. We would probably talk with Office of
20 Administrative Law to see where we are in terms of that
21 issue because it has -- we have seen some change recently
22 relative to that.

23 COMMITTEE MEMBER PEACE: Would 60 days be more
24 appropriate?

25 DEPUTY DIRECTOR LEVENSON: Well, could you write

1 in there somewhere they need to try to get it done within
2 30, but if there is extenuating circumstances, they can be
3 given a longer period of time.

4 MR. de BIE: We were able to craft some phase-in
5 language in phase one so we can look at something a bit
6 simpler for phase two. But something that encourages
7 sites to come into compliance as quickly as possible,
8 30 days, or if certain circumstances exist, additional
9 time. Is that what you're thinking?

10 COMMITTEE MEMBER PEACE: Yeah.

11 MR. de BIE: We can look at that. The question
12 then would be if we want to try to craft something and
13 then notice that for 15 days and have that part of this
14 notice period or bring back something more concrete for
15 the second 15 day.

16 COMMITTEE MEMBER JONES: Let's do it now.

17 COMMITTEE MEMBER PEACE: Yeah. Do it now.

18 MR. de BIE: Great.

19 COMMITTEE MEMBER PEACE: This is ready to go out
20 for a 15-day comment period.

21 Our last item today is a public hearing for
22 proposed revised alternative daily cover regulations,
23 that's Item 8.

24 DEPUTY DIRECTOR LEVENSON: This is our last item,
25 as you said, Madam Chair. The public hearing for proposed

1 revised alternative daily cover regulations and Reinhard
2 Hohlwein is going make that presentation.

3 MR. HOHLWEIN: Thank you. Good afternoon,
4 Committee members.

5 Today's item is in regards to the public hearing
6 for the proposed revised alternative daily cover
7 regulations package that staff has been working on for the
8 Board's consideration. There is no action necessary on
9 the information before you at this time, as the formal
10 comment period recently ended and we have not completed a
11 full response to written comments as yet.

12 A 60-day comment period was provided as part of
13 the rule making in order for all concerned parties to
14 digest the regulations and provide appropriate comments to
15 the Board. That comment period ended on June 17th. No
16 additional comment periods have yet been scheduled, as it
17 is anticipated that after staff provide written response
18 to the comments already submitted, we will be back before
19 you in August with an updated package to consider a
20 subsequent 15-day comment period highlighting any changes
21 to the regulations that are deemed appropriate.

22 The regulations being considered are those which
23 were approved in draft form by the Board in October of
24 2002. As you know, Board staff recently conducted two
25 workshops regarding these proposed regulations, one here

1 in Sacramento and another in Southern California. These
2 workshops were presented so that those parties who might
3 be affected by these regulations would have an opportunity
4 to explore the possible impacts of the package and to
5 provide questions to Board staff about what the impacts
6 might mean to various regulatory programs, as well as to
7 landfill operators.

8 We have received written comments from many
9 parties, including the solid waste industry and the
10 composting industry, as well as from the LEA community.
11 Roughly 30 comments were submitted. Generally speaking,
12 the LEAs were not in favor of increasing their obligations
13 outside the scope of protecting public health and safety.
14 They feel the requirements in the proposed regulations
15 regarding record keeping that may or may not require
16 adjustment to the governing documents for landfills may
17 present some problems regarding enforceability. Proposed
18 regulatory requirements that may require LEAs to monitor
19 or perhaps modify the diversion rates for applicable
20 jurisdictions is the heart of their concern.

21 Industry comments were generally divided into
22 three areas: Those who were in favor of the regulations
23 as proposed and as written; those in favor of clarifying
24 the ability for landfill operators to have maximum
25 flexibility with the regard to the application of tracking

1 of these ADC materials; and those parties who are very
2 happy with the regulations proposed limits to the use of
3 ADC, as well as for beneficial use of waste-derived
4 materials within landfills which are not used as a
5 substitute for daily cover.

6 Other significant comments of note were from
7 several parties who wish to adjust definitions that are
8 contained in the proposed regs. Most numerous were the
9 comments regarding the definition of sludge and those who
10 wish to see the inclusion of cementitious spray-on
11 materials among the types of ADC that need not be subject
12 to projects prior to site specific approval by LEAs as
13 acceptable for use as substitute for daily cover.

14 We are analyzing the comments received and are
15 comfortable that we can work with the interested parties
16 and reach resolution on the issues involved. We have
17 identified no significant issues which we consider
18 show-stoppers or would give us significant problems.

19 That concludes my presentation. I'd be happy to
20 answer any other questions.

21 COMMITTEE MEMBER PEACE: I don't have any
22 questions.

23 There are several people here who would like to
24 speak. I encourage you to also send any written comments
25 to the Board members and staff. This is an official

1 public hearing on the ADC regs. There will not be a vote
2 of the Committee after we hear the testimony, so again
3 please keep your comments brief.

4 We have several speakers. And our first speaker
5 will be Teresa Dodge.

6 MS. DODGE: Good afternoon. Teresa Dodge, L.A.
7 County Sanitation District. Thank you for the opportunity
8 to speak on these regs.

9 I have three items for your consideration, one
10 comment and request, and then two submittals.
11 Specifically, the comment and request is regarding the
12 requirement to the operator to determine the maximum limit
13 for all beneficial reuse on the landfill. We support
14 calculations of beneficial reuse for planning purposes and
15 to utilize as an index for potential abuse. However, we
16 cannot support calculation as an enforcement tool or a
17 predictor of absolute use. The two reasons for this is
18 are that the calculations by necessity are based on too
19 many assumptions to be defensible and that the
20 parameters -- many parameters used to determine the amount
21 of material needed in the field are outside the operators
22 control. As a result, their predictions cannot be
23 accurate.

24 An example could be daily cover. Adequate cover
25 is determined in the field based on the tonnage received

1 that day and the actual field conditions requiring cover.
2 Because it is a performance-based standard, evaluation and
3 enforcement should also take place in the field, not based
4 on calculations. While it is not the intent, requiring an
5 operator to set a maximum limit establishes an arbitrary
6 cap that is not based on technical considerations,
7 performance standards, or policy issues. An operator is
8 being asked to predict use in advance of having the field
9 conditions needed to determine that use. And so as a
10 result, we respectfully ask that you under Section
11 21600(b) 6(b) to delete the words "determine a maximum
12 limit" and substitute "estimate limits" or "estimate use."

13 The two submittals I have on behalf of Dan Noble
14 from the Association of Compost Producers couldn't make it
15 today. He asked me to submit a letter on his behalf. And
16 then in addition, two weeks ago at the Waste Board
17 sponsored workshop on these regs, I did a brief
18 presentation, longer than allowed for today, an analysis
19 we did for the change of covering needs responding to
20 change in working phase parameters, such as tonnage, lift,
21 height, and the actual configuration of the working phase.
22 And I request the ability to submit a PowerPoint on
23 analysis as well.

24 Are there any questions?

25 COMMITTEE MEMBER PEACE: No. Thank you. I'm

1 sorry.

2 COMMITTEE MEMBER JONES: Ms. Dodge, after you're
3 done dropping off -- go ahead. Drop off your CD. You
4 referred to a section where this is. 21600.

5 MS. DODGE: 21600(b) 6(b).

6 COMMITTEE MEMBER JONES: Okay. The new
7 underlined area alternative daily cover and beneficial
8 use.

9 MS. DODGE: Yes. Specifically addressing RDSI
10 requirements.

11 COMMITTEE MEMBER JONES: Which I also have an
12 issue with on the calculations and the engineering. I
13 don't understand that. I don't understand why either --
14 just from the standpoint that the material varies and what
15 you're going to need varies and working phase versus, yet
16 we're going to make it specific in a document. That's a
17 littles scary. All right. Thank you.

18 MS. DODGE: Thank you.

19 COMMITTEE MEMBER JONES: I think, Madam Chair,
20 before you call the next one -- at some point,
21 Mr. Levenson, I'd like somebody to explain why -- what the
22 reason for this is. We've had this debate over the years
23 on the different types of material, and I think this was
24 the first time I've seen it added like this.

25 COMMITTEE MEMBER PEACE: Next speaker, Joan

1 Edwards.

2 MS. EDWARDS: Thank you. I'd like to put my
3 comments briefly into context. And that is, again, the
4 Board's and staff's off-stated commitment to highest and
5 best use. And I think we can all agree that rarely, if
6 ever, is ADC -- at least rarely is ADC the highest and
7 best use. Nevertheless, it is often the cheapest use.
8 And when ADC is used, other market opportunities are not.

9 The second is that tons are migrating. Tons that
10 used to be reported as ADC are now reported as erosion
11 control, road base, berms, and the like. And for those of
12 us that follow C&D recycling on a landfill site, we're
13 increasingly seeing higher and higher diversion rates
14 reported with a large, if not majority, of that diversion
15 rate being spread out about the landfill in some way.

16 Two of my concerns have to do with understanding
17 this migration of tonnage and the use of ADC and other
18 beneficial uses on the landfill. First of all, when you
19 process mixed C&D on a landfill, you may weigh in. But
20 you don't necessarily weigh out. That is you go to the
21 scale house. You may weigh in. It may be coded as going
22 to the area of the landfill where the C&D processing
23 facility is located. But quite often, all that is weighed
24 out is that material which goes off site. Metal went to a
25 metal dealer. It gets weighed again at the scale house.

1 Ditto if it's a wall board that is going -- gypsum that's
2 going for some beneficial use.

3 But let us suppose that it's ADC, came off the
4 trammel. It's going to be used as ADC or it's material
5 that's going to be used for road base pulled off. What
6 about if it's going to be used for erosion control. That
7 material is often not weighed. And so given the
8 discussion that we've had lately about the importance of
9 weighing, I'm concerned about how you can know how much
10 material is being used in ADC, whether you require
11 reporting or not, when it is clear that landfills are not
12 always weighing out.

13 I may sympathize with some of their reasons.
14 "Oh, it's way out on the landfill. It's too expensive to
15 go back to the scale house." But sympathy or no, do we
16 want to monitor how much ADC is used as well as other
17 beneficial reuse at the landfill site?

18 The second has to do with monitoring of whether
19 something is appropriately called ADC or cover. I have
20 observed for some six months now a landfill that has a C&D
21 processing facility. I think they're doing a good job.
22 They're certainly improving over time. A high percentage
23 of their diversion rate, though, is on-site use. Their
24 trammel is at the beginning of the C&D line. They
25 pre-crush, running over it with a tractor, then they

1 trammel it. That means that they get a lot more coming
2 out of the trammel for cover use than they might if they
3 did it further down the line.

4 This is material that gets a lot of spearing or
5 divers. In other words, there's a lot of wood. You run
6 over it with a tractor. It goes into the trammel. And
7 those pieces of wood go straight through. About a quarter
8 to a third of what comes out of that trammel is wood.
9 Wood that could be used for a higher and better use. It
10 is being reported as cover, not ADC. And yet, my
11 understanding of the definition of cover, this is not
12 appropriate reporting. And it has been confirmed, at
13 least verbally by staff when I have shown them photos of
14 the cover material. Again, this has to do with how are we
15 going to monitor the ADC regs.

16 My other comments have to do with the grain size.
17 I personally think the grain size is too big. Staff has
18 told me that they believe that it's appropriate given the
19 equipment out there. I believe the equipment out there
20 has been installed based on what was a perception that
21 staff would accept larger grain size, as evidenced by the
22 18 inches that was used last time. Certainly, many
23 facilities get less than the 95 percent of six-inch or
24 twelve-inch material. They do it by a variety of means,
25 doing a second screening, using vibrating screens instead

1 of trammels, putting the trammel at the end of the line.

2 I raise this not so much because I'm insistent on reducing
3 the grain size, but because I'm concerned there may be
4 some effort to increase the grain size. And I feel
5 strongly that staff can find plenty of examples of
6 facilities that can do this appropriately with a small
7 grain size.

8 And the last of my comments is that -- it was
9 raised at the last workshop. Someone in the audience said
10 that -- they expressed concern that there was nothing in
11 the regs referring to contamination. And staff's response
12 was they didn't see it as a problem. They needed to use
13 some reasonableness criteria, and they brought up the
14 instance of compost with plastic that couldn't be sold as
15 compost. A good compost facility screens the plastic.
16 It's done. If you make the investment, you can do it.

17 I think there needs to be some attention paid to
18 the contamination issue and littering and the like. And I
19 would -- I'd like to see at least something in the eyesore
20 that indicated how staff was going to attempt to better
21 monitor or ensure that LEAs better monitor these
22 activities.

23 That concludes my comments. Thank you.

24 COMMITTEE MEMBER JONES: Ms. Peace.

25 COMMITTEE MEMBER PEACE: Thank you. I share some

1 of your concerns about beneficial use and using materials
2 for a higher use, I'm concerned about it also. Especially
3 when they estimate that if all the concrete and rubber
4 were recycled, it would still only constitute about 5
5 percent of what is needed in the construction industry.
6 So I do share your concern. And I thank you.

7 COMMITTEE MEMBER JONES: Just a question for
8 Ms. Edwards. You're saying that when the material gets
9 diverted at the scale house over to an area for processing
10 and it gets weighted, it doesn't get weighed again. And I
11 agree. I don't see a need to. But when loads of paper go
12 into a recycling facility, they're weighed at the scale.

13 MS. EDWARDS: Yes.

14 COMMITTEE MEMBER JONES: And then they run over
15 the screens, and they run over things, and the
16 contamination is taken out. What's reported to the state
17 is what goes through the scale, not what gets on trailers
18 and gets sold.

19 MS. EDWARDS: Well, you have a requirement for
20 less than X percent residue, and anyone can complain if
21 they believe that that residue rate is being exceeded and
22 paper dealers rarely get anywhere near it.

23 COMMITTEE MEMBER JONES: That's not what I'm
24 saying, Joan. What I'm saying is you're asking that the
25 sites that deal with ADC to go to a higher standard than a

1 regular recycling center. A regular recycling center
2 weighs it coming in, and then it gets diverted. It gets
3 bailed. It gets put on trailers. But it's what goes into
4 the facility, that is what's reported as the diversion.

5 MS. EDWARDS: Oh, actually, I misunderstood your
6 comment. Actually, a paper dealer weighs out as well.
7 They do weigh out. They weigh out what they market. The
8 difference between what comes in and what they weigh out
9 is the residue.

10 COMMITTEE MEMBER JONES: Understood. But it
11 never works -- it is always in arrears just because of the
12 marketability of the bail. So I think you're asking for a
13 standard higher dealing with ADC than you would be for a
14 simple recycling center.

15 MS. EDWARDS: I'm asking for it in the context of
16 the Board saying they want to monitor ADC use. They're
17 concerned about capacity. They're concerned about the
18 percentage of material that's used on site. And I'm
19 simply observing that the percentages are growing for
20 those of us who do monitor in some way for one reason or
21 another a C&D regulation, locally.

22 And just as many people testified here five years
23 ago that there was a clear growing problem with C&D
24 processing overall and C&D ADC. And staff came to see
25 that some years later. I am saying I believe there is a

1 growing problem on landfills and something needs to be
2 done to monitor it.

3 Now I offered a suggestion, weighing, even though
4 I do understand the concern about cost and going back to
5 the scale house, particularly a problem at some landfills
6 versus others. I'm just saying there is an issue of
7 monitoring here that should be addressed somehow, and I
8 don't believe it is in the regs.

9 COMMITTEE MEMBER PEACE: Okay. Thank you.

10 Our next speaker Mark Aprea.

11 MR. APREA: Madam Chair, Mr. Jones, I hadn't
12 planned on speaking to you today, but the discussion from
13 the prior speaker compels me to come up before you and
14 give you some background on Assembly Bill 1647 which
15 definitively addressed the issue of alternative daily
16 cover upon which these regs are based.

17 At the time that was a bill sponsored by the
18 industry and local government to address some of the
19 uncertainties of the use of ADC as a result of a Superior
20 Court decision. And in that statute it specifically states
21 that the use of alternative daily cover is diversion, and
22 therefore, should be counted as recycling. I'm sorry I
23 don't have the exact quote. The language was very
24 carefully crafted so that there was no ambiguity as to
25 that, and that it certainly provided that the Waste Board

1 should regulate its use.

2 But to address the issue, Ms. Peace, that you
3 raised and the prior speaker raised in terms of highest
4 and best use, the Board has no jurisdiction to address
5 that issue in that statutorily it was defined as
6 diversion. And this Board, nor any other agency, says
7 that one form of diversion is superior or inferior to
8 another, that is, there is a hierarchy based in statute in
9 terms of waste reduction, reuse, and recycling, but that
10 there is no hierarchy beyond that.

11 And while I know that there are certainly folks
12 who disagree with AB 1647 and may wish to modify it, that
13 modification would have to occur in the Legislature. And,
14 in fact, prior debates on this issue, which had been many,
15 and that as the Board directed staff to promulgate these
16 regulations that they would not engage in activity that
17 would seek to revisit the statutory authority on this
18 issue, but rather see how the use of ADC could be better
19 regulated so that its purpose was -- the statutory purpose
20 was satisfied. So I just wanted to, in essence, raise
21 that issue so that as the Board moves forward on these
22 issues that if there is to be a debate or discussion on
23 higher or best use that would probably be ultimately
24 carried out in the Legislature and not here at the Board.

25 COMMITTEE MEMBER PEACE: Thank you.

1 And our next speaker is Chuck White.

2 MR. WHITE: Madam Chair, Mr. Jones, I'll just try
3 to be real brief. We have submitted written comments on
4 this. Our comments really are in four major areas: one
5 is on flexibility; two is on multiple weighing; three is
6 on limits in the RDSI; and four is a phase-in period.

7 Briefly with respect to flexibility, we've got
8 some concerns about establishing these standards for
9 processing thickness and particle size across the board.
10 However, those would be more palatable as default
11 requirements as long as there's an opportunity to seek
12 approval of alternative processing, alternative thickness,
13 and alternative particle sizes through specific approval
14 by the LEA and the Board.

15 It appears that seems to be your intent.
16 However, some there's some cumbersome language in the
17 regulations right now that seems to still require
18 processing regardless and would prevent an LEA from coming
19 up with alternative processing or even absence a
20 processing if the ADC material would meet the requirements
21 of the performance. We would just ask that language be
22 furthered clarified to hopefully give ability on a case by
23 case basis for LEAs and the Board to approve alternative
24 processing particle size and thickness requirements.

25 The second issue is the multiple weighing issue.

1 We have concerns that if we do bring in the material
2 that's destined for beneficial use, we weigh it at the
3 scale house typically at all our landfills, and then it
4 goes off to be stockpiled before it is then siphoned off
5 for ADC use, for landscaping, for other uses. We would
6 hate to have to go through a second scaling process when
7 we take it out of stockpile before we have to use it for
8 ADC, before we have to use for any of a number of other
9 on-site beneficial use.

10 We don't think that's the intent of the
11 regulations, and we would hope that would not be a
12 requirement to have to do multiple weighing of the same
13 material just simply to keep track of which specific
14 beneficial use it's put to because that would be a very
15 cumbersome and expensive process. We don't have any
16 problem weighing the material when it comes in the gate
17 and is destined for beneficial use, but further weighing
18 after that would be very, very problematic.

19 The third issue is limits to ADC in the RDSI.
20 The regulations seem to require that you have to determine
21 a maximum quantity limits of the materials in your RDSI
22 which would then be in place for up to five years. It's
23 very difficult to necessarily imagine five years in
24 advance, all the specific changes that may occur in
25 tonnage rates and the amount of ADC you'd have to use. We

1 hope the Board would be somewhat flexible in allowing the
2 RDSI to provide estimates of a total amount of material
3 being used, but not be something that would be turned back
4 on the operator as an enforcement tool because we exceeded
5 some limit. We put ourselves into the RSDI because of
6 changing conditions.

7 And the fourth and final item is provide an
8 adequate phase-in period. We provide in our written
9 comments a six-month phase-in period to make adjustments
10 to make sure we are fully in compliance with these
11 regulations becoming full force and effect. Thank you.

12 COMMITTEE MEMBER PEACE: Thank you.

13 Our next speaker is Gary Liss.

14 MR. LISS: Good afternoon, Madam Chair, members
15 of the Committee. My name's Gary Liss. I'm here
16 representing the Global Recycling Counsel of the
17 California Resources Recovery Association. We received a
18 copy of the comments sent in by the Californians Against
19 Waste and wanted to support their letter that was
20 submitted on June 17th, signed by Mark Murray to the
21 Board.

22 We want to thank the Waste Board staff for the
23 clarifications made to these regs to eliminate ADC abuse.
24 It's been a major problem around the state for several
25 years. We also believe that a key point of CAW's comments

1 was that the Waste Board does retain considerable
2 authority for restricting the circumstances under which
3 diversion credit can be issued and the amount of diversion
4 credit that can be use issued. So contrary to what
5 Mr. Aprea just indicated, that you have no authority, the
6 environmental community believes there is considerable
7 authority with the Board, and you should use that, because
8 ADC was intended from its inception in early 1990s to be
9 only an interim use until we develop the markets. And we
10 have now gone a full decade beyond that interim period,
11 and we have not seen ADC being used as a tool to help
12 people bridge the gap until they develop the markets. The
13 markets have not been developed because of the ADC. So
14 there's this Catch-22 going on.

15 The Global Recycling Counsel encourages you to
16 look at your other authorities and responsibilities under
17 AB 939 and related legislation for market development and
18 that the market development responsibilities be integrated
19 into the permit and enforcement responsibilities. One of
20 the biggest problems with the Waste Board is that you on
21 one side are dealing with regulations and the other side
22 dealing with promotion of advocacy for diversion goals.
23 You need to integrate those, and market development needs
24 to be integrated into this regulation package. And part
25 of it -- I don't have the answer on how to do that. One

1 way might be that you're only allowed diversion credit if
2 the communities that are using ADC are moving towards
3 developing markets. And make it as a condition of
4 approval that they are doing this only as an interim
5 measure until such time as markets are developed.

6 In terms of Joan Edwards' comments, I was
7 particularly in support of the issue of the multiple
8 weighing. And one of -- the documentation of the
9 materials flow is a serious concern. The last speaker
10 said that that could be a problem in increasing the cost
11 of landfills. And in my mind, that's not a problem.
12 What's the problem with increasing the cost of landfills?
13 It will push out the waste to be more likely diverted.
14 You should do what's right, not what's cost-efficient from
15 the landfill perspective. You should focus on what you
16 need as far as the information to document what you know
17 is going on in that site, and make sure that migration
18 that Ms. Edwards talked about is not a serious problem,
19 and to have full documentation that it's not just going
20 from ADC to some other beneficial uses.

21 Multiple ADC use continues to be a concern of
22 mine. In reading through the regs -- I'm not clear.
23 There may be a section of the regs that addresses that
24 more clearly than I saw. But I would underscore that
25 multiple ADC on top of each other more than the functional

1 need -- functional amount needed to accomplish the daily
2 cover requirement should not be allowed and that these
3 regulations should make sure that multiple daily cover is
4 not allowed more than is functionally needed.

5 Regarding the comments about the RDSI by
6 Mr. White and L.A. San on maximum amount versus an
7 estimate, I was the solid waste manager in the San Jose
8 for nine-and-a-half years. And one of the key tools we
9 used with BFI and the Newby Island Landfill was when they
10 tried to exceed the rated use of their site, we consider
11 that a significant change requiring them to do CEQA and
12 basically brought them to the table because they were a
13 grandfathered site and would not get new permits for that
14 facility.

15 Similarly, I think in this case you do want to
16 have that firm guidance being provided in the RDSI. And
17 if they are changing, fine. Let them change the RDSI and
18 go through the environmental review to ensure that
19 additional traffic concerns and other concerns are
20 appropriately addressed by going above the amounts
21 provided for in the design of that facility.

22 In terms of flexibility, the last speaker spoke
23 about as one of the priority concerns. I stress that the
24 clear message from the LEAs, the local enforcement agency,
25 is give us clear direction. And it's really important to

1 provide firm and clear direction to the LEAs. This issue
2 has been floating around because there hasn't been clear
3 direction from this Board. Flexibility is one thing, but
4 make sure you have hard numbers in there and clear signals
5 as to what you're looking to have accomplished.

6 That basically concludes my comments. Thank you
7 for the opportunity to be here today, and I hope that you
8 do particularly focus on the highest and best use issues,
9 the market development requirements of your strategic
10 plan, and how they are affected by these regulations
11 either positively or negatively. And if they are
12 negatively affected, that there should be a way in the
13 regulations to address that and through other market
14 development initiatives of the Board. Thank you.

15 COMMITTEE MEMBER PEACE: Thank you.

16 Next speaker -- I'm sorry. I can't read your
17 last name. Donald Gambelin.

18 MR. GAMBELIN: Donald Gambelin with Norcal Waste
19 Systems. And just as a point of background, I live in the
20 real world of being not only a composter, but a landfill
21 owner/operator. So hopefully my comments are
22 exceptionally pertinent.

23 Where do I start? I think we pointed out in our
24 letter -- and Norcal was a party to the signing of the
25 industry group letter -- that one of the things that's

1 confusing to us both in AB 1647 and then put into statute,
2 ADC is actually identified as a subset of beneficial
3 reuse. And unfortunately, the regulations seem to
4 differentiate between beneficial use and ADC where as in
5 statute it's defined as a subset of beneficial reuse.

6 The other important point being that statute also
7 identifies it as beneficial reuse, not beneficial use. I
8 think that is extremely important in light of the
9 hierarchy that Mr. Aprea reminded everybody about, it's
10 reduce, reuse, and recycling. So it clearly falls within
11 that hierarchy.

12 Also being a composter as well as a landfill
13 owner/operator -- and this was sometime ago in one of the
14 ADC workshops -- I made the comment that I firmly believe
15 that the use of ADC affects the composting industry. But
16 we have no idea if that's a positive or negative effect.
17 And to this day, we still don't know if it's a positive or
18 negative effect. Speaking from our own business
19 standpoint, I can tell you it's probably a positive effect
20 that there is the use of ADC as well as other markets for
21 green material and composted material. I believe there's
22 a good relationship there. Unfortunately, we haven't been
23 able to look at that. We had suggested sometime ago there
24 be a market analysis statewide to back up some of the
25 claims that a lot of folks throw around that it's a

1 negative impact on the composting industry because,
2 frankly, we don't see that.

3 And then finally, I was asking some of our
4 landfill operators about those regulations and what they
5 would do to comply with them. And they pointed out
6 something that I think is somewhat of a deep-seeded
7 problem with this. Landfill construction is a
8 volume-based operation or exercise. If you ask a landfill
9 equipment operator to put 20 or 30 tons worth of ADC on
10 the face, they'll give you a blank look in the eyes. But
11 if you ask them to put a couple of scraper loads of ADC on
12 a face to cover it, they'll know exactly what you're
13 talking about. What I'm trying to point out there is that
14 construction is volume-based. It's a volume-based
15 exercise. And the performance standards in the ADC regs
16 are volume based.

17 It was only during the workshops a couple week
18 ago -- and I attended the one in Sacramento -- that I
19 learned that even though the ADC regs may speak to
20 performance standards that are volume based and other
21 requirements that are more volume based, the six to twelve
22 inches, those sort of aspects, that really the enforcement
23 for ADC use is going to be through the disposal reporting
24 system, which is a tonnage-based reporting system. There
25 is an inherent conflict in there where you have a

1 volume-based operation in the field on a day-to-day basis,
2 and yet you have some enforcement through some back office
3 accounting using assumed densities and assumed conversion
4 rates. You have inherent problems there, and I wanted to
5 point that out because it became apparent even to one of
6 my equipment operators this was going to be a conflict in
7 trying to comply with the ADC regulations.

8 And I think I will just simply refer to, again,
9 our letter that we previously submitted for detail on the
10 rest of the comments. Thank you.

11 COMMITTEE MEMBER PEACE: Thank you.

12 COMMITTEE MEMBER JONES: Madam Chair. Don, let's
13 go back over what you just said. I'm having a little
14 struggle with what you just said. The material comes in,
15 it's weighed at the landfill. It's processed. It gets
16 put on. It's volume based. And you're saying it's going
17 to be a problem based on what? For enforcement.

18 MR. GAMBELIN: What I heard during the workshop
19 was that enforcement of the appropriate use or the amount
20 of ADC, for instance, that is used, most of that
21 enforcement is going to take place through looking at the
22 disposal reporting system records and saying you had so
23 much tonnage of potential ADC come across the gate or
24 across the scale, and somehow we're going to arrive at
25 this notion that that was the appropriate amount that was

1 used on the face on a daily basis, when the appropriate
2 amount to be used on the face on a daily basis is really a
3 volume-based amount. It's 6 to 12 inches -- covering 6 to
4 12 inches on average, covering the entire face, whatever
5 that working face area is, which, again, is going to be
6 variable on a daily basis depending on the season,
7 depending on the configuration.

8 So I just see this inherent conflict where you're
9 going to have somebody looking at disposal reporting
10 records in the background and saying, "They used too much,
11 or "They didn't use enough." And there's going to be a
12 lot of chasing around numbers because we are trying to
13 sync up two things that don't necessarily go well
14 together.

15 COMMITTEE MEMBER JONES: So I guess my follow-up
16 is going to be, is this going to be a trigger for us to
17 look at? Because clearly working faces and material types
18 are going to change, you know, the weight of the material.
19 But I mean, clearly we've got problems in abuse of ADC in
20 certain facilities. We don't have problems as was pointed
21 out in an agenda item last month that there is -- I mean,
22 I think six facilities were identified, and they were
23 looked at both from a P&E side as well as a local
24 assistance side, and it was found out that they were okay.
25 It always seems to be the argument that everybody like to

1 use about the abuse.

2 But I've seen some abuse. And I think there were
3 a few facilities that were very guilty of some abuse. So
4 I guess my question is, does this -- what he's talking
5 about go back to this 21600 (b)6 that we're going to
6 establish some kind of a requirement for calculation and
7 then you enforce off of that? I'm just trying to get it
8 straight.

9 MR. de BIE: If I may give you my take on things.
10 I think there's multiple levels of potential enforcement
11 imbedded in these regs as well as the RS. There's
12 certainly the state minimum standards day-to-day operation
13 going out, have you met the requirements. That's one
14 thing. There's the detail that's now being required in
15 the RDSI that says give us better description of the type
16 of material, how you use the material. There's been some
17 debate of whether they should have a maximum or some
18 calculation or whatever. That's a number or a calculation
19 or an estimate that will be used to evaluate the site and,
20 you know, basically matching what you see out there in the
21 field with what they described. There's also --

22 COMMITTEE MEMBER JONES: But that always changes,
23 Mark.

24 MR. de BIE: It will, certainly.

25 COMMITTEE MEMBER JONES: That changes everyday.

1 MR. de BIE: We heard testimony about ways to
2 address that, and we'll take that into consideration.

3 I think the third level is in the DRS reporting
4 system, if there's an observation that the numbers are
5 fluctuating or changing or peaking, that that will be a
6 red flag to say, "Let's go back to that site and see
7 what's happening there," and then we'll start digging down
8 and looking at what they estimated, what the LEA has been
9 reporting and that sort of thing. So in that regard, yes,
10 it is a type of enforcement, but it's just a trigger to go
11 look deeper. It's not going to be the first and last step
12 in terms of enforcement and making a determination. It's
13 going to be that red flag to look at.

14 COMMITTEE MEMBER JONES: All right. Thanks.

15 COMMITTEE MEMBER PEACE: Our last speaker,
16 Mr. Carlson.

17 MR. CARLSON: Johnnie Carlson with Californians
18 Against Waste.

19 We are generally very supportive of the
20 directions being taken by the Board to restrict the use of
21 ADC, and particularly green waste ADC. While we have no
22 objection to the use of secondary materials, including
23 green waste ADC for use as ADC or other beneficial uses
24 when on-site materials are unavailable, CAW remains
25 strongly opposed to the concept of providing diversion

1 credit for green waste that is used as ADC.

2 Now that end-use markets for green waste
3 composing have matured, the continued provision of
4 diversion credit for the use of green waste as ADC
5 threatens the very existence of the California composting
6 industry. We believe the Waste Board has considerable
7 authority, as we expressed in our letter, to restrict the
8 circumstances under which diversion credit can be issued
9 and the amount of diversion credit which can be issued.
10 And we would like to see you exercise more authority in
11 that direction.

12 We have additional concerns regarding the use of
13 contaminated soil or other materials with the ability to
14 emit volatile organic compounds, VOC's, or ammonia when
15 used as ADC or simply as daily cover. We would like to
16 see the Waste Board undertake a full discussion of the use
17 of VOCs and ammonia emissions from the material used as
18 ADC and daily cover, and that that discussion include a
19 perspective from experts at the Air Quality Management
20 Districts.

21 Thank you for providing us with the opportunity
22 to comment on the regulations. And I'd like to apologize
23 for my state of dress. I recently had an apartment fire,
24 And have yet to purchase more clothes. Thank you.

25 COMMITTEE MEMBER PEACE: Thank you.

1 I guess seeing no further comments, this item is
2 concluded, and this meeting is adjourned. Two four nine.

3 (Thereupon the California Integrated Waste
4 Managment Board, Permitting and Enforcement
5 Committee adjourned at 2:49 p.m.)
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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 18th day of July, 2003.

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